IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No. 10580 of 2000

Between:

J.M.Naidu, S/o Pitchi Naidu,
Door No.50-103-2, T.P.T.Colony, Visakhapatnam.

..... PETITIONER

AND

Visakhapatnam Municipal Corporation,

rep. by its Commissioner, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ, Order or direction, more particularly, one in the nature of Writ of Mandamus declaring the inaction on the part of the respondent corporation in not considering the petitioner's B.R.S. Application No.3291/98 dated 31.8.1998, for unduly long period, as illegal, arbitrary, capricious and violative of principles of natural justice and violative of Art.19 & 21 of the Constitution of India and consequently to direct the respondent corporation to consider and dispose of the petitioner's B.R.S. Application with in the time to be fixed by this Hon'ble Court.

Counsel for the Petitioner : SMT. N.(P) ANJANA DEVI

Counsel for the Respondent : MR.T.S.VENKATARAMANA, SC

The Court made the following :

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ORDER :

The petitioner is the owner of Plot No.HIG 244/4 of Muvvalapalem layout in Visakhapatnam District, having purchased the same under registered sale deed dated 26-8-1988 from Visakhapatnam Urban Development Authority (VUDA). He obtained permission from the Visakhapatnam Municipal Corporation and construction a building upto third floor. He also constructed fourth floor without any permission and applied for regularization vide B.R.S. No.3291/98 dated 31-8-1998 in accordance with G.O.Ms.No.419, dated 31-7-1998. Alleging that the same has not been considered, the present writ petition is filed.

The Commissioner of Visakhapatnam Municipal Corporation filed a counter affidavit inter alia stating as under.

……This notice was served to the petitioner on 17-9-1999. The petitioner has not complied with the directions given in the notice and continued the construction. Subsequently the complainant Dr. K.Sriramachandra Rao has filed a suit O.S.No.234/2000 on the file of I Additional Junior Civil Judge at Visakhapatnam against M/s. Sree Lalitha Constructions its Managing Partner, Sri P.Subbaraju; Smt. P.Yasoda, w/o. Sri Subba Raju, petitioner; J.M.Naidu and made the respondent herein as 6th defendant and the said suit is still pending in the said Court. The permission has granted on 27-4-1998, he cannot complete the building upto 4th floor before 30-7-1998, the cut-off date as per G.O.Ms.No.419, MA, dt.30-7-1998. Hence the petitioner is not entitled for regularization under the said G.O. He completed the work during the pendency of writ in W.P.No.2813 of 2000, WPMP.No.3629 of 2000 of the Hon'ble High Court.

In para-3 of the counter affidavit, it is further stated that as the suit filed against the petitioner is pending, the B.R.S. application cannot be considered. The fact that the suit is filed and pending is not denied by the learned counsel for the petitioner. Therefore, no direction can be granted to the Visakhapatnam Municipal Corporation to dispose of the B.R.S. application filed by the petitioner while the suit is pending before the Civil Court. As and when the suit is disposed of, the petitioner may revive his request.

The writ petition, with the above observation, is dismissed. No costs.

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(V.V.S. RAO, J.)

14-10-2004.

Msr.

To

1. The Commissioner, Visakhapatnam Municipal Corporation,

Visakhapatnam.

2. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.10580 of 2000

14-10-2004.

(Msr)